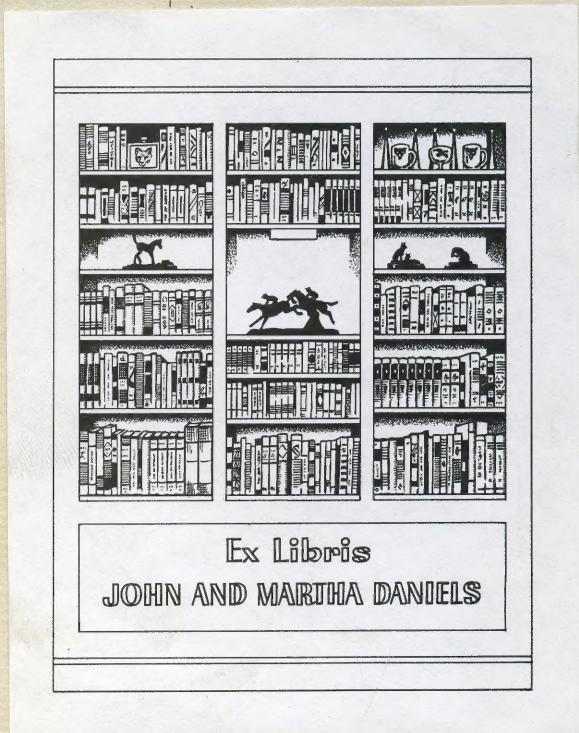


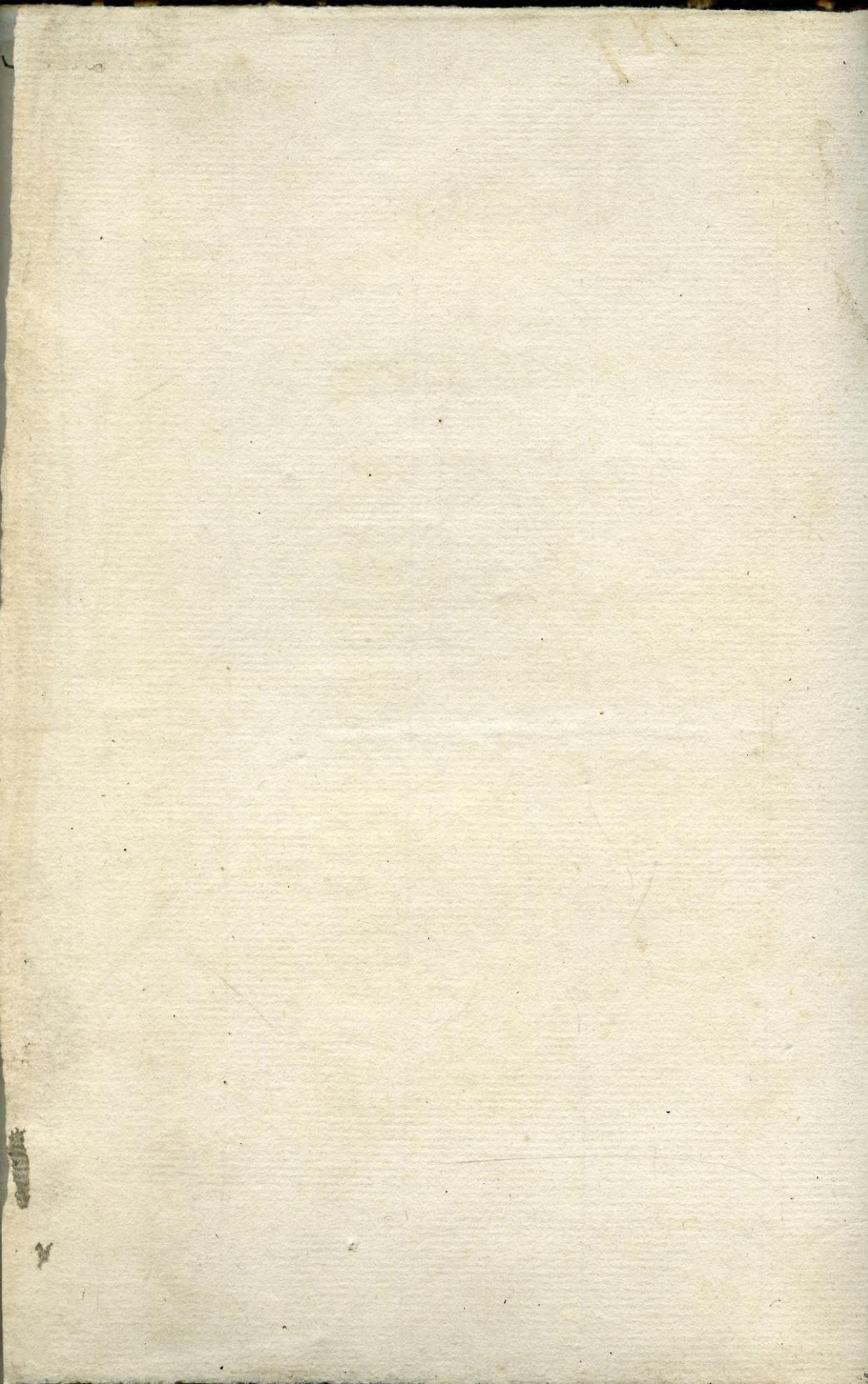
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A N
A C C O U N T
O F T H E P R E S E N T
D A R I N G P R A C T I C E S
O F
Night-Hunters, and Poachers,
W I T H S O M E
H I N T S

Upon which to form a LAW, as well for restraining these Offenders, as for the Preservation of the GAME throughout the Kingdom.

By HENRY ZOUCH, CLERK,
a Justice of the Peace.

— *Addit.*
Regula peccatis que pænas irroget æquas. HOR.

L O N D O N :
Printed for J. STOCKDALE, opposite Bur-
lington-House, Piccadilly, 1783.

COMING

TO THE STREETS OF

SAN FRANCISCO

BY THE KING OF FRANCE

WITH GREAT

ENTHUSIASM

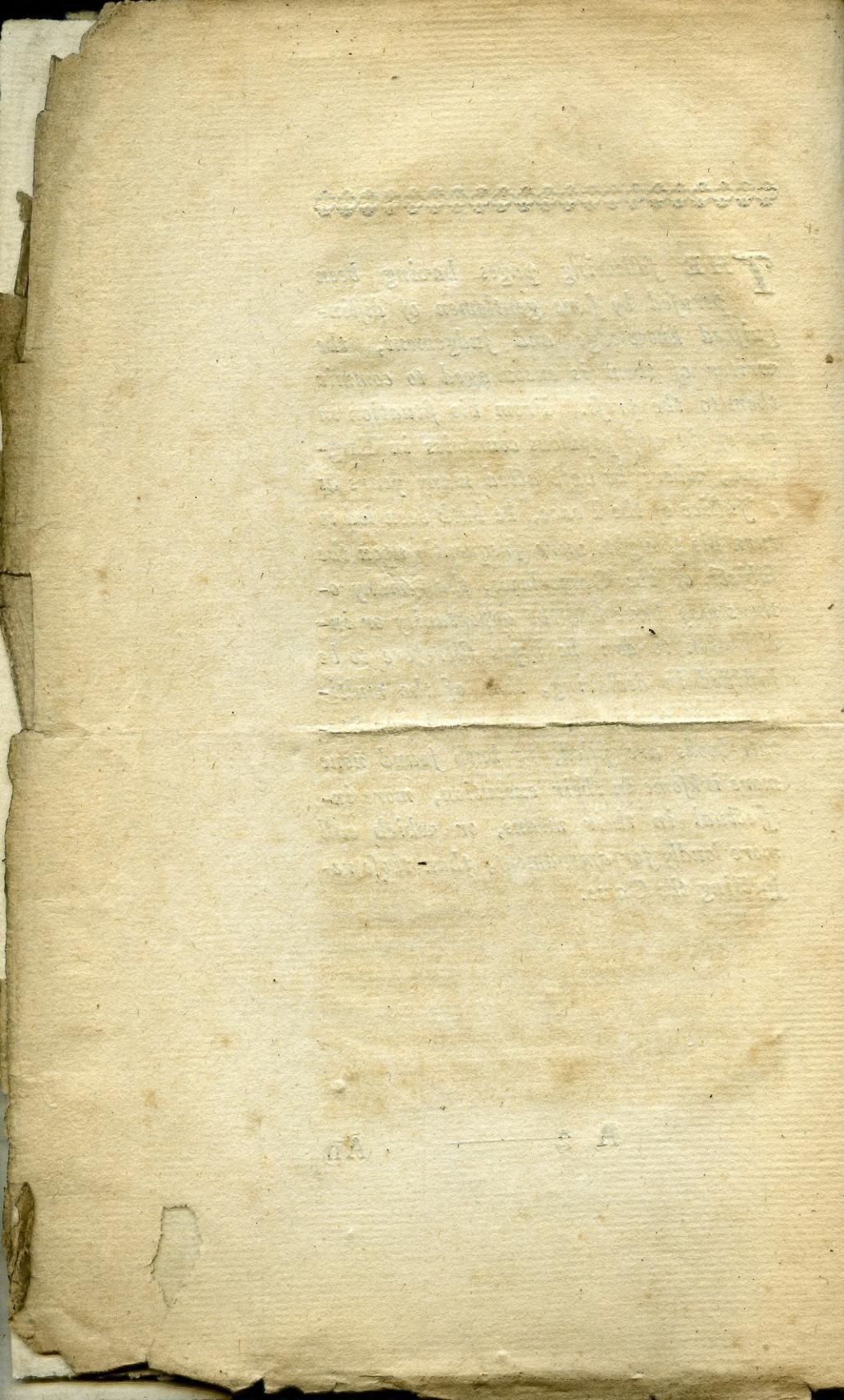
Upon which is found a LAW
Limiting the sale of Candy
Distribution of the GAME
in the Kingdom

— — —

LOMOMO

THE KING OF SAN FRANCISCO, opposite the
Hotel de Ville, San Francisco, California.

THE following pages having been
perused by some gentlemen of distin-
guished knowledge and judgement, the
writer of them is encouraged to commit
them to the press. From his situation in
one of the most populous countries in Eng-
land, where he hath acted many years as
a Justice of the Peace, he hath been led to
turn his thoughts more frequently upon the
subject of the Game-laws, than many o-
thers may have had the opportunity or in-
clination to do: he hopes therefore to be
justified in declaring, that of the multi-
plicity of penal laws with which our Sta-
tute-books are filled, he hath found none
more irksome in their execution, more ineffectual
in their means, or which call
more loudly for amendment, than those re-
specting the Game.



An ACCOUNT, &c.

NIGHT-HUNTERS and poachers of every kind, have of late years grown to be a very numerous body, and from their improved methods of catching the Game, and the ease with which they can dispose of it, it is in several places in a good measure destroyed : but what is most of all an alarming consideration, a practice prevails in different parts of the kingdom, for persons to assemble together *in the night, in companies, armed with fire-arms, clubs, and other offensive weapons,* when they proceed, not only to destroy the Game with nets, snares, and dogs, but frequently to commit other offences, as well to the detriment of individuals, as in direct violation of the public quiet. Though many of these are well known, yet they have the effrontery to denounce vengeance against every one who shall attempt to restrain

strain them. Nay the farmers hold them in such utter dread, that so far from lodging any informations against them, they are even afraid to disturb a single snare with which their fields may at any time happen to be surrounded.

OF the many offenders who have been charged with destroying, or attempting to destroy the Game, they may be generally comprised under the following descriptions :—as men of profligate and abandoned characters—or without any visible means of obtaining a livelihood—or having been guilty of notorious offences—or justly suspected of such, and these suspicions too often confirmed by their subsequent misconduct.

FEW instances have come within my recollection, where the families of these persons have not been in a most necessitous condition, or a charge to the parishes where they belong.

IT is very remarkable that they are seldom or ever reclaimed ; nay such is their

their infatuation, that they will frequently wander to a great distance, the distance of many miles from their respective homes, where they can have a more convenient opportunity of succeeding in their *nightly* excursions. Children are professedly trained up by their parents in the same infamous courses, and a skilful Poacher finds his account in taking young fellows, *by way of apprentices*, as it is termed, to instruct them in the different methods of catching the Game ; and to which purpose the nights of Saturday and Sunday are more particularly appropriated.

MANY of those who are expert in destroying hares and partridges, are not less so in robbing fish-ponds, and rabbit-warrens ; guns, snares, and nets for these several purposes are commonly found in the possession of the same persons ; and it is usual with them to take the whole stock of a pigeon-house, by fixing nets over the openings of these houses, and forcing the birds into them. It was not long ago that a large quantity of pigeons,
poultry,

poultry, and other things were carried off in one night, from different places in the same village ; and two horses which were supposed to have been loaded with these articles, were taken from thence and turned adrift near the town of *Sheffield*.

THERE is a device which is now very much practised for destroying fish, particularly trouts in rivulets and brooks, by parties going *in the night* with blazing torches, which gives them an opportunity of using spears and nets, so that they can easily secure most of the fish which come in their way. There is reason to believe, that by this contrivance, no private fish-ponds can be well secured against them. Pheasants also are become an easy prey to poachers *in the night-time*.

It may seem perhaps to be a ridiculous assertion, but the fact is indisputable, that there now actually exists in several places, an *Association* of poachers and the abettors of them, who are ready to

to advance money for the purpose of paying penalties, or otherwise assisting any of their suffering *bretbren*.

A man was sometime ago convicted of setting snares *in the night*, he had a wife and eight children who were all miserable in the extreme, the whole furniture of the hovel in which they lived amounted not to the value of ten shillings. Yet, this man, upon application to his associates, very speedily procured the penal sum in which he had been convicted.

AT the spring assizes last held at *York*, it appeared that a subscription was entered into by a great number of persons to maintain in prison, and to defend upon their trials two men who were committed and indicted for shooting a servant belonging to the Earl of *Effingham*: this servant had been sent out with others to apprehend the two men and their company, when setting and using snares *in the night*, not far from his Lordship's house. Some others from the same
B country,

country, notorious for being night-hun-
ters were tried at the above mentioned
assizes for grand larceny.

THE parks, woods, and grounds ad-
joining to *Wentworth-House*, the seat of
the late truly illustrious Marquis of
Rockingham, having been constantly
poached in the night, some attempts were
made to discover the offenders, when
these with the most resentful malignity,
amongst other depredations, took upon
themselves to deface an elegant building
in the park at *Tankerfley* by breaking to
pieces the windows, doors, &c.

THO' the learned professor *Blackstone*,
when he delivered his lectures in the
University of *Oxford*, was led to think
that the offences constituted by the Game
laws were of a questionable nature: yet
it is highly probable that had he been
aware of the complicated evils which
have since arisen, he would have con-
tended for the necessity of introducing
some essential change, some substantial
reform in the system of these laws; for
he

he intimates that the breach of them is an offence against the public police, and œconomy of the common wealth, by promoting idleness in low and indigent persons, and taking them away from their proper employments and callings.

WHEN those inferior classes of the people avowedly take upon themselves the infraction of any positive law, there must be some fundamental defect in the law itself, that it is disproportionate to the end, and too imperfect to check the progress of those offences it was meant to restrain. Yet for a private person to give a decided opinion upon that great branch of jurisprudence which teaches the nature and extent of crimes and punishments, would be to assume a confidence which might possibly expose him to censure: however the meanest individual in the state may perhaps be able to sketch out some rude and imperfect outlines, for others of acknowledged abilities and leisure to fill up. It is observed by the great Mr *Lock* " That politics (in the confined meaning) are only common

sense applied to national instead of private concerns.” *See* *Enquiry*

NEW regulations in the law of every country, and new modes of enforcing them will constantly be required. A civil satisfaction ought not to be considered as an adequate compensation for a public mischief; and it is a well-known maxim, that those crimes, which men have the easiest opportunity of committing, and which cannot be so conveniently guarded against, ought to be punished with the greater severity. “ *Ea sunt animadvertenda peccata maxime quæ difficillimè præcaventur.* CICERO.

For this, as well as other reasons, most of those offences, which are committed in the *night-time*, are held to be aggravated to a peculiar degree of enormity. Ought not *they* therefore to be considered as the just objects of legal resentment, who hardened by a long course of impunity, employ themselves in destroying the Game *by night*, and sally forth in armed numbers prepared to engage in any desperate attempts ? I

I beg to repeat the idea, that it is not for the preservation of the Game alone (tho' this with the qualified sportsmen of *England* is held to be a matter of general and national concern) that we ought to be so much sollicitous ; it is not to secure the right of this Game to those whom the law hath given it, which we ought principally to regard, but it is to keep those of our fellow subjects within the bounds of their duty, who are now become a burthen, or even a terror to the places where they live.

WHOEVER will please to attend to the stat. 1. H. 7. c. 7, and to that of 9. G. 1. c. 22. commonly distinguished by the name of the *Waltham Black Act*, with the subsequent amendments thereof, will probably be furnished with some materials which may not be unaptly applied to the present subject.

THE former part of this act confines several offences therein specified to persons armed with swords, fire-arms, and having their faces blacked, or being otherwise

wise disguised, but it afterwards goes further and says, “ If any person or persons (which certainly means whether they be armed or not) shall commit the offences in the manner therein expressed, every person so offending shall suffer death, as in cases of felony, without benefit of clergy.” The comment which is made by the celebrated professor above mentioned, upon this act, is very apposite to the present purpose. “ I mention this offence says he, not on account of the damage done thereby to private property, but of the manner in which that damage is committed, to the breach of the public peace, and the terror of his Majesty’s subjects,” vol. 4, p. 144. As to being *disguised*, any one may be said generally to be so *in the night*, from the difficulty of ascertaining the person of another at that time, and most of all, one with whom we are unacquainted, or to whom we may probably be perfect strangers.

WHAT then I wish to suggest as a matter highly deserving a serious enquiry
is,

is, whether a revision of the Game laws may not be properly grounded upon the last mentioned Statutes, and as coming, in some respects within *the equity and reason* of them. It will be readily granted that when a disorder grows obstinate, remedies of a more powerful operation are required to work a radical and permanent cure thereof; and for this purpose I am bold to assert, that every offence ought to be measured by the injury done to society.

THE laws for the preservation of the Game destroyed in the day-time, with some little amendments which may be made in them, seem to be intelligible, and compulsory enough to answer every general good purpose. Would it then be unwise or unjust to render the punishments against *night-poachers only*, more coercive and more exemplary? and could this be effected, there is the strongest reason to believe that the penalties upon unqualified persons of credit, sporting fairly, might be less rigorously exacted, or proportioned in such a manner, as to leave

leave no reasonable grounds for complaint.

IF *eves-droppers*, that is, those who stand under the eves of houses to hearken after news, and to carry it to others, are punishable by indictment, or otherwise : If *night-walkers* are also marked out by the law as public offenders ; if any one, who shall steal a loaf of bread, or a basket of coals, tho', perhaps to supply the urgent calls of a numerous family, is subject to be corporally punished, can it ever be thought to militate against the principles of sound policy, that those desperate members of society, who impatient of rule, and in contempt of all authority, traverse the fields and the woods, *by night*, should be considered as being guilty of a criminal act ? not to be determined in a summary way, but by that true constitutional mode, by an express conviction under the verdict of a jury ? *

FIRST MIDGES

* It is a palpable truth that the power of a Justice of the Peace is increased to a very formidable height, by that authority which is given him of proceeding against so many offences in

FIRST then, ought not every offender who poaches *in the night*, to incur some corporal punishment, and perhaps without being allowed to make any pecuniary atonement?

† SECONDLY, ought not some severe punishment to be inflicted upon every such offender as aforesaid, going about *armed*? but most of all, Thirdly, Ought not they to be deemed deserving of a still heavier punishment who thus go about *in the night, armed, and two or more* being in company together?

IT seems hardly possible for the ingenuity of the most subtle casuist to distinguish the heinousness of these offences with their concomitant train of mischiefs, from that of some of those which

C THEFT, BURGLARY, &c. the

in a summary and arbitrary way, *without* the intervention of a jury: it seems therefore to be a desirable event that this extensive jurisdiction should in many cases be restrained, or rather transferred into the hands of those in which the wisdom of our ancient lawgivers had placed it.

† It is, I think, an observation of *Montesquieu*, "that the strongest objects of dread to depraved minds are bodily punishment, confinement, and labour."

the *Waltham Act* hath pointed out. Indeed a further question may arise whether some of the most daring offenders under this denomination, whose *nightly* employments require them generally to be of strong and athletic constitutions, men of vicious activity, ought not with every colour of justice to be disposed of as soldiers, or sea-faring men, and by that means be of some essential service to the state?

PECUNIARY penalties and forfeitures being found inadequate to the offence of smuggling, it became necessary to affix a greater punishment upon the more dangerous and avowed practices herein, namely, such as are carried on *by force—
in disguise—by three or more in company—
armed with fire-arms, or other offensive weapons.*

REWARDS are also granted as well to those who apprehend offenders, as to such who shall be maimed or wounded in apprehending or endeavouring to apprehend them: Nay the executors or admini-

administrators of such as shall be killed in apprehending or pursuing such persons, shall be entitled to a considerable reward. The buyers and receivers of prohibited goods are also liable to be punished.—I have contented myself with a bare recital of some general provisions which have been made against this offence of *importing, selling, &c.* of goods without paying the duties imposed thereon; and I am free to declare, that some of these provisions may with great effect and propriety be introduced into the proposed plan for amending the Game laws.

IT is to be lamented that the price of Game is now arrived to such an height as to be a certain inducement for indigent persons, to sacrifice their health, their reputation, and their liberty, in the procuring of it: Yet when by the humanity of our laws such ample provision is made for the maintenance of the poor of this kingdom, beyond that of any other in the known world, that every man who is incapable of work,

through age, infirmity, or otherwise, hath a right to support from his opulent neighbours, no possible excuse can be admitted in palliation of the guilt of these offenders.—But to proceed, whenever there appears to be a defect in the police of a country, every good governor* will be ready to adopt such proposed plans of improvement therein, as may best contribute to *prevent* the commission of crimes, so as to render the infliction of punishments less frequent, and less necessary; and in the present instance a tax upon dogs, under proper modifications, seems to be one necessary expedient for accomplishing this salutary end.

WHEN a Bill was some time ago introduced into the house of commons, which went amongst other things to a taxation of this sort, it was ludicrously asked, “ Why not tax cats ? ” but as this

* Monsieur Cobert, one of the greatest statesmen that France ever bred, used to declare, that “ he thought his time well spent in perusing an hundred proposals for advancing the common good, if but *one* deserved encouragement.”

this joke is now become too stale to bear a repetition, should a Bill of the same tendency be ever again proposed, it may with equal force be combated by a quotation from *Buffon.**

THE financier perhaps may be ready to alledge, that this would be an unproductive tax; be it so, but tho' it is his peculiar province to project the most commodious ways of filling the public coffers, so as to supply the exigencies of the state, yet the preservation of the morals of the people is not of less importance to be regarded. Others in the sudden fervor of their zeal, for the preservation perhaps of some mangy, half-starved mongrel, some furious mastiff or bull-dog, may vehemently exclaim, What! institute a law which will necessarily devote to destruction this faithful domestic creature! Yes, I say, exterminate the whole race, rather than that a single rational being should suffer by the noxious bite of one of them. ||

BUT

* See his *Histoire Naturelle*, &c. Tome cinquème, p. 186.

¶ The account, which Dr. Mead hath recorded of the direful effects

BUT what is most to our present purpose, it is in vain for the *night-hunter* to attempt to force the hares into his different engines, without the assistance of one or more of the mixed and broken breed of barking curs, terriers, or lurchers ; and besides, it is from dogs of these kinds which follow their owners into the fields, that the eggs and unfledged brood of partridges, &c. as well as young hares, are very frequently destroyed.

I am firmly persuaded, that even a *partial*, and perhaps a *temporary tax* of this sort, would gradually tend to prevent many of those evils which are now universally complained of. It must indeed be allowed, that a general and indiscriminate tax imposed upon *all* dogs,

b seems effects from the madness of these animals, is enough to chill the very blood of the most unfeeling reader ! From the number of those who constantly perish by that most calamitous of all distempers, the *Hydropobia*, one would hope that, on this ground alone, it might be a powerful inducement with the *Guardians of the state*, to look out for some *preventive* ; and this may in a good degree be effected by a reduction of those useless dogs, which are chiefly kept by inferior people, and which, from the little attention that is paid to them, are known in every way to do the greatest mischief.

seems to be the most equitable proposition. Yet there are some objections thereto : however, I do not wish to insinuate, that gentlemen will hold *this* to be an objection, because a charge upon dogs will be more likely to affect them, than any others. From the great increase of these animals, and the different purposes for which they are kept, they may very justly be considered as an article of luxury, and which ought to be taxed accordingly.

THE law hath properly defined the persons who are *not* allowed to keep guns for the destruction of the Game ; Would it then be impolitic that this tax should be limited to dogs belonging to them ? Lords of Manors, indeed under particular circumstances, have already a power to seize upon, and to destroy dogs, but this law, for obvious reasons, is seldom executed. From the several mischiefs to which the farmers and others are constantly subject, by the numbers of these creatures, few persons would grudge to pay a small tax for a dog which may be

of

of real use to them. Besides, this tax would operate upon qualified persons, as they are frequently obliged to quarter out their dogs, and particularly hounds, with their tenants or others ; and hence perhaps no very inconsiderable sum might accrue to the public revenue.

AGAIN, it is a fact not to be controverted, that those petty *ale-houses* which are opened in every corner of the kingdom, are so many licensed seminaries for the encouragement of idleness, extravagance, and vice. It is here that ill-disposed persons of every complexion do frequently collect themselves, and from whence they can more conveniently issue forth at any hour *in the night*, in prosecution of their unwarrantable designs. If then any alteration in the Game laws should be found to be necessary, some clause to the following effect may perhaps be admitted, namely, " That any ale-house keeper knowingly harbouring, encouraging, or supplying with liquor, or provision, any person or persons proceeding to, or returning from

from the act of killing, or attempting to kill the Game *in the night*, or who shall wilfully neglect to give information against these offenders, such ale-house keeper to forfeit pounds, and to be for ever disqualified from keeping an ale-house.

WOULD it be improper to prohibit the keepers of inns and public-houses from having or using any Game, which cannot be proved to have been legally obtained ? Nay, ought not some penalty to be laid upon all buyers of Game without exception ? There are few large towns in which inn-keepers and others are not to be found, who are known to pick up Game of all kinds, and to retail it at a very exorbitant rate.

AND here I cannot forbear to remark, that they of whatever consideration they may otherwise be, cannot avoid the imputation of acting a very dishonourable part, who avow themselves to be the ready receivers of Game, by whatever means it can be taken, or from whatever

D quar-

quarter it can be procured. Is it an uncharitable presumption that such *Receivers* as these, if they could escape with impunity, would feel no great compunction in purchasing fruit stolen from the gardens, or fish stolen from the ponds of their neighbours?

If it be urged that the game laws being already sufficiently penal, any further extension of them ought not to be adopted; let us keep in mind *who* those delinquents really are, and against *whom* the projected penalties are immediately levelled. It is surely of infinite moment that the criminal excesses of the common people should be effectually restrained, by enforcing a due degree of subordination, and a general and uniform obedience to the law of the land: for unless some check can be put to the proceedings of this species of offenders, the honest and respectable country gentleman, who spends his income in his own neighbourhood, is contributory to the relief and maintenance of the poor, and who perhaps, serves the public as a magistrate, ~~or~~ or

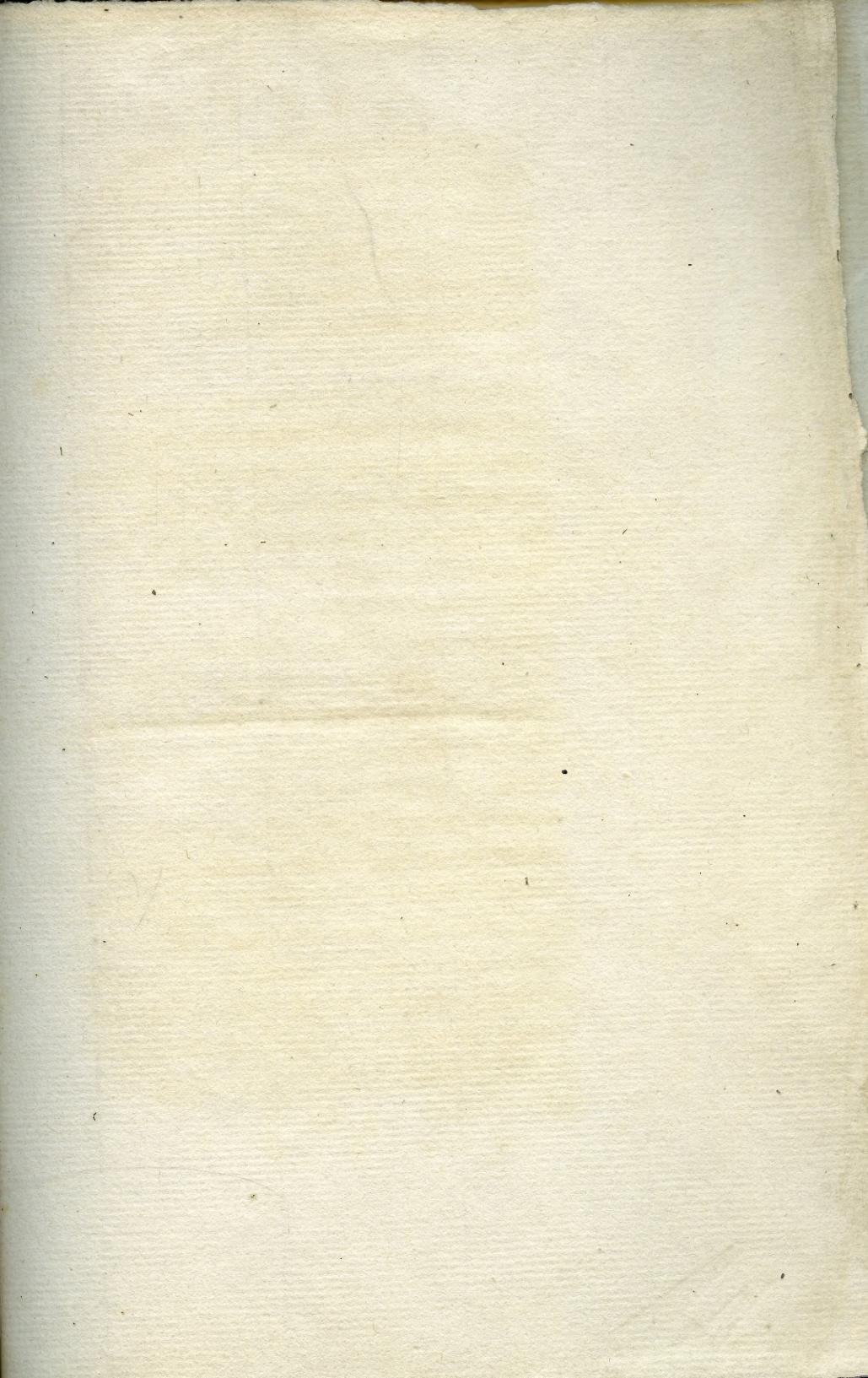
or in some other useful capacity, must be constrained to live under the mortification of having his Partridges driven, his Hares hanged, his Fish-ponds robbed, and other mischiefs done to him, and perhaps in the very grounds adjoining to his mansion, by a *nightly-band* of *armed ruffians*, whom to withstand would be running a desperate risk of bringing his person or his property into imminent peril. The contest for power between the country gentlemen and these desperate poachers, is now become critical and serious, and the necessity for some parliamentary redress is the more apparent and incontestable at this time, when many of these offenders who have been employed in the army and navy, are restored to the community at large, disused to ordinary labour, and not likely to be improved either in their morals or habits of life.

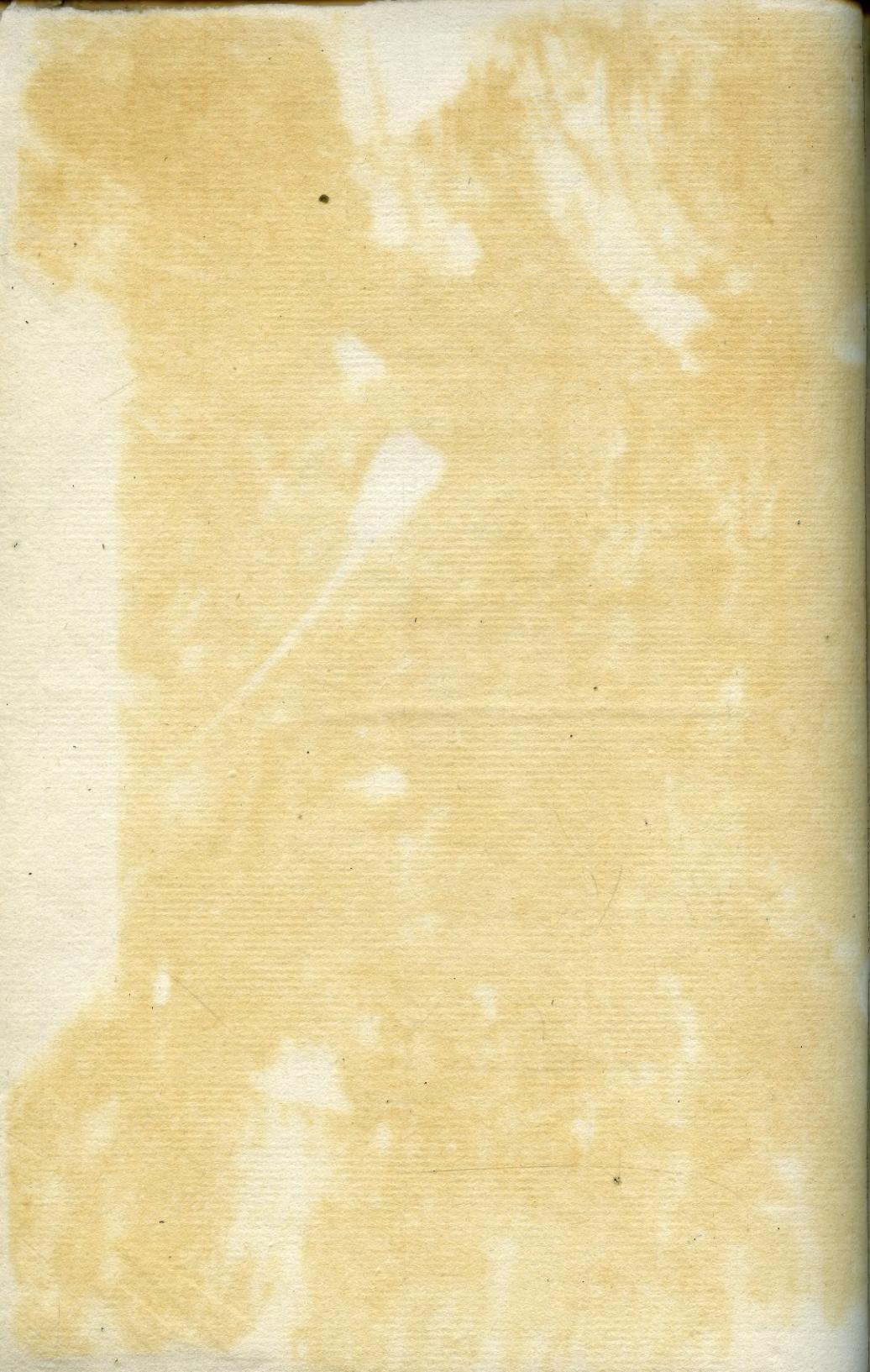
I cannot conclude without observing, that there are some gentlemen who contend for having the Game to be made an individual property, and hence, under this notion, they are disinclined to listen

D 2 to

to any other propositions. Yet they will please to consider, that whatever benefit may be derived from such a law as this, many difficulties seem to be in the way, and of some consequence to be removed. In times like the present, when the principles of civil liberty are every where investigated with the most scrupulous exactness, an occasion may probably be given for many persons to consider themselves deprived of a right which they have long exercised, and especially when they find that *this* right is to be exclusively vested in the owners of landed estates only. Besides, with such a law as this, it may be in the power of any man possessing a small quantity of ground to decoy the greatest part of the game in the neighbourhood thereof, so as to make it a certain and easy capture.—A better opportunity would also be given to *night-hunters and poachers* to continue those illicit practices, which are already a disgrace to the police of that government under which we live, and which it is the duty and interest of every good citizen by every legal exertion to uphold and maintain.

F I N I S.





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